IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 26979 of 2000(J)

PETITIONER:

M/S. BHIMA EXPORTS,
GAYATHRI,THOTTAKKAD ROAD,
COCHIN – 682 011.
REPRESENTED BY ITS PARTNER SHRI BINDU MADHAV.

BY ADV. SRI.REJI PAUL
ADV. SRI.ANIL XAVIER
ADV. SRI.ZAKEER HUSSAIN

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. REGIONAL EXECUTIVE, KERALA FISHERMEN'S WELFARE FUND BOARD, REGIONAL OFFICE, ERNAKULAM.

3. SPECIAL TAHSILDAR (RR), KANAYANNUR TALUK, ERNAKULAM.

BY SR. GOVERNMENT PLEADER SMT. R. MEERA.
BY ADV. SRI.R.SATISH KUMAR
ADV. SRI.P.SANTHALINGAM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. No. 26979 OF 2000

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Dated this the 4th September, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The petitioner is a partnership firm engaged in the export of Sea Food products. In this petition filed under Article 226 of the Constitution of India, the petitioner primarily calls in questions the demand notice issued by the respondents, inter alia directing the petitioner-firm to pay certain amounts under the provisions of Kerala Fishermen's Welfare Fund Act, 1985

2. The vires of the said enactment was questioned by a similarly placed person before the Apex Court in **Koluthara Exports Ltd. vs. State of Kerala and others [(2002) 2 Supreme Court Cases 459]** . The Apex Court by its judgment in the aforesaid case has stated as under:

> *"Keeping in view the constitutional objects as contained in the preamble to the Constitution and Articles 39 and 41 in Part IV thereof and the Statement of Objects and Reasons of the Act it has to be held that the Act and the establishment of Welfare Fund thereunder for requirements of fishermen outlined in Section 3(4) of the Act, is a commendable legislation. However, the fundamental principles for the governance of the country contained in Part IV of the Constitution, although indicate and determine the direction for the State but they are not legislative heads or fields of legislation like the entries in*

Lists I, II and III of the Seventh Schedule of the Constitution. When any statute of a State or any provision therein is questioned on the ground of lack of legislative competence , the State cannot claim legitimacy for enacting the impugned provisions with reference to the provisions in Part Iv of the Constitution: the legislative competence must be demonstrated with reference to one or more of the entries in Lists II and III of the Seventh Schedule of the Constitution.

The provisions of Section 3(4) of the Act postulate social security and welfare measures for the fishermen. The State can, therefore, justify its competence under this entry. But, the State cannot, in an Act under Entry 23 of List III, place the burden of an impost by way of contribution for giving effect to the Act and the Scheme made thereunder for the social security and social welfare of a section of society upon a person who is not a member of such section of society nor an employer of a person who is a member of such section of society. The burden of the impost may be placed only when there exists the relationship of employer and employee between the contributor and the beneficiary of the provisions of the Act and the Scheme made thereunder. "

3. In view of the law declared by the Apex Court in the aforesaid decision, we cannot sustain the demand notice issued by the respondents. Accordingly, the following:

O R D E R

i) Original Petition is allowed.

ii) Exts. P3 and P5 notices issued by the respondents are quashed.

iii) C.M.P.No. 45258 of 2002 is disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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O.P. No. 26979 OF 2000

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Dated this the 4th September, 2007

J U D G M E N T